श्री उपसभापति: रूल्स के हिसाब से आप एक नोटिस दे दीजिए। ...(व्यवधान)...

श्री कमाल अख्तर: उपसभापति महोदय, यह इतना महत्वपूर्ण मुद्दा है ...(व्यवधान)...

श्री उपसभापति: आप इसमें रूल्स के हिसाब से या तो काल अटैंशन भेजिए या और किसी रूल के अंदर देकर आप उसको डिसकशन में लाइए। इससे कुछ नहीं होने वाला है।

MR. DEPUTY CHAIRMAN: Now Special Mentions are over. Shri Md. Ali Ashraf Fatmi will introduce the Bill.

GOVERNMENT BILLS

The Manipur University Bill, 2005

THE MINISTER OF STATE IN THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (SHRI MD. ALI ASHRAF FATMI): Sir, I beg to move for leave to introduce a Bill to establish and incorporate a teaching and affiliating university in the State of Manipur and to provide for matters connected therewith or incidental thereto.

The question was put and the motion was adopted.

SHRI MD. ALI ASHRAF FATMI: Sir, I introduce the Bill.

The Code of Criminal Procedure (Amendment) Bill, 1994

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): Mr. Deputy Chairman, Sir, I beg to move:—

> That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration.

Sir, the need for amending various provisions of the Code of Criminal Procedure, 1973 has continued to be felt for toning up of the investigating machinery and process, strengthening the prosecution-related machinery, streamlining and improving procedures, especially from the point of view of expediting trial court procedures, tackling problems of undertrials and matters connected with the grant of bail and effective miscellaneous improvements. Accordingly, the Code of Criminal Procedure (Amendment) Bill, 1994 was introduced in the Rajya Sabha on 9th May, 1994. The Bill was referred to the Parliamentary Standing Committee which considered

1.00 P.M.

the Bill and submitted its report on 28th February, 1996. The report was examined in the Ministry of Home Affairs. The previous Government could not finalise their views on the recommendations of the Committee. Our Government further examined and considered the recommendations of the Parliamentary Standing Committee and based on its recommendations, a list of official amendments to the Bill which has already been introduced in the Rajya Sabha, is being moved. The recommendations of the Committee have been largely accepted.

The thrust areas of the Bill are:—(i) Toning up the investigative machinery and process; (ii) Strengthing the prosecution and related machinery; (iii) Streamlining the improving procedures, especially from the point of view of expending trial court procedures; (iv) Tackling the problem of undertials and matters connected with the grant of bail; and (v) Effecting miscellaneous improvements.

The important proposals contained in the Bill are as follow:—

(i) Prohibit arrest of a women after sun set and before sun rise, except in exceptional circumstances; (ii) Police is being required to give information about the arrest of a person as well as the place where he is being held to anyone who may be nominated by him for sending such information; (iii) Mandatory judicial inquiry in case of death or disappearance of a person or rape of a woman while in the custody of the police. In case of death, examination of the dead body to be conducted within 24 hours of death; (iv) Mandatory provision that if the arrested person is accused of a bailable offence and he is indigent and cannot furnish surety, the court shall release him on him execution of a bond without surety; (v) An under trial prisoner, other than the one accused of an offence for which death has been prescribed as one of the punishments, should be released on his personal bond with or without sureties when he has been under detention for period extending to one half of the maximum period of imprisonment provided for the alleged offence; (vi) In no case will an undertrial be detained beyond the maximum period of imprisonment provided for the alleged offence; (vii) Bail and anticipatory bail provisions are being made stringent for hardened criminals; (viii) The State Governments are being empowered to establish a Directorate

of Prosecution under the administrative control of the Home Department of the State; and (xi) Strengthening of legal provisions to ensure peace, harmony and tranquility in the society.

Sir, this Bill has been pending before Parliament since 1994. It has now come before us for its consideration and passing. I hope that these very important provisions will be considered and will be allowed to form a part of the Code of Criminal Procedure.

The question was proposed

MR. DEPUTY CHAIRMAN: The discussion on it will be taken up at 2 O' clock, after lunch.

The House is adjourned for lunch for one hour

The House then adjourned for lunch at two minutes past one of the clock.

The House reassembled after lunch at two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Sir, this Bill was initiated a decade ago. It has been combined with the latest Bill, (*Interruptions*) But, those amendments are very important amendments. In certain cases, the State Governments have started to have the Director of Prosecution and giving certain administrative powers and also supervising powers to them and other things. But, Sir, in total, we have to find out whether the Criminal Procedure Code and also the Indian Penal Code which are in force from ancient time were practised properly when there is a proper administration at the State level. But, subsequently, when there are changes in Governments, they could not follow the procedures properly, they violated it more often. For example, we can take section 46. In this section, the procedure is given when a person is to be arrested and when the procedure should be followed. It says that save in exceptional circumstances, no woman shall be arrested after sun-set and before sun-rise and where such exceptional circumstances exist, the police officer shall, by making a written report obtain the prior permission of his immediate superior officer for effecting such as an arrest. This is for the purpose of arresting a woman. But, this should also apply to a man. Because you know the incident of arresting the former Chief Minister of Tamil Nadu.

Kalaignar Karunanidhi was arrested at midnight. Even though he is a very elderly statesman, he was arrested at mid-night for a simple offence. He was arrested at mid-night, as if he was going to escape from the clutches of the law. So, this type of misuse of the legal process is now happening.

SHRI P.G. NARAYANAN (Tamil Nadu): It is not a misuse... (*Interruptions*)...

SHRI E.M. SUDARSANA NATCHIAPPAN: And the latest incident is that of the Shankaracharya of Kanchi. He was also arrested at mid-night. So, all these incidents are very easily quoted to show how the legal process is misused by certain people, when they are in power. At the same time, when they were in the opposition, they were crying that they were penalised by the misuse of the law. Therefore, Sir, in future also, State Governments may misuse the law. They should follow certain principles. Therefore, this enactment has to be amended, then and there. But, in totality, these amendments are coming after a gap of about 10 years. One set of amendments was proposed ten years back. Subsequently, another set of amendments is placed before the House now. In the meantime, a lot of changes have taken place in the circumstances. In such a situation, a comprehensive amendment should be brought before the House, so that we can take care of the change of circumstances which has happened in the last ten years.

For example, I am taking section 46. This section gives protection to women. No doubt, a woman should be protected. But, at the same time, men should also be protected. As changes in circumstances have taken place, it has to be looked into when a new Bill is brought before the House.

As far as other things are concerned, I would like to say this. How a rape accused should be examined, etc., all these things have been made according to the judicial pronouncements. But, now it is included as part of the Criminal Procedure Code. This is a welcome thing. There are many other things. Section 320 states that in the course of an investigation, a report in writing to the officer in-charge of the police station expressing his desire to compound the offence as provided in the said section. This particular section of allowing the investigating officer to record a statement of compounding the offence in the first instance, after knowing that the accused is ready to compound the offence, in one way, it can be misused very easily because the accused may not have the intention at that time.

Only when there is a charge-sheet before the magistrate and when he appears there, he may feel that the situation has arisen that the complainant will come forward for compounding the offence. But, if we allow like this, the first part itself is made to be the person who admits the offence, even before the entire process of investigation is over, the charge-sheet is filed, the magistrate has taken the cognisance of the case, the file was taken to the magistrate's court and then the summons were issued or the summons were issued to the witnesses, especially the first witness who has complained.

When he or she comes before the court, then only compounding of the offences will come. But here, at the initial stage itself, powers were given to the police officer and that is not a good thing. Very easily, the police officer, who is not at all properly trained, would misuse. It may be a blank allegation, but why this type of request to the Government and on that basis, the amendment is brought up. The prosecution agency, as also the police should adopt modern techniques, but they are following the same colonial methods of threatening the witnesses and accusing the witnesses, and keeping the accused in their illegal custody, not producing them till they extract certain evidence from them, or attempting certain part of evidence and such other things. Therefore, when we are allowing the prosecution, especially the police to have more powers, it will become a police-raj. Nowadays, even in a democratic set up, they are giving importance to the police and not for the development of the State. I can very easily cite the example of Tamil Nadu, where they are giving more importance for police cases. They are threatening everybody, even in the Shankaracharya case. He may have been involved in some case, but ...(*Interruptions*)...

MR. DEPUTY CHAIRMAN: Mr. Narayanan, let him speak. ...(*Interruptions*)...

SHRI E.M. SUDARSANA NATCHIAPPAN: Sir, he can very well speak what he wants to say when his turn comes up. ...(*Interruptions*)...

SHRI P.G. NARAYANAN: Sir, he was a manager of the Mutt. ...(*Interruptions*)...

MR. DEPUTY CHAIRMAN: When your turn comes up, then you speak. Please sit down.

SHRI P.G. NARAYANAN: Sir, he is misleading the House. ...(*Interruptions*)...

SHRI E.M. SUDARSANA NATCHIAPPAN: The Chief Minister companion's husband ...(*Interruptions*)... He was also charged with the possession of *ganja*. The adopted son of the Chief Minister was also prosecuted under the Narcotics Act for having possessed *ganja*. The police in Tamil Nadu has become ganja police; whenever you want to prosecute someone, if you want someone not to come out of jail for a year...(*Interruptions*)... I am not yielding. Why don't you reply in detail when your turn comes up, Mr. Narayanan?

MR. DEPUTY CHAIRMAN: Mr. Narayanan, are you speaking on this Bill?

SHRI P.G. NARAYANAN: No, Sir, but unnecessarily he is charging the State Government and the police. The police arrested the person who has actually committed the crime. ...(*Interruptions*)... It is unfair. ...(*Interruptions*)...

SHRI E.M. SUDARSANA NATCHIAPPAN: That will be decided by the courts. Why I am taking this example is, particular modus operandi is adopted in respect of others. Is this applicable for the persons in power in the State Government also? When such is the situation, you are giving more and more powers to the police. Then, the democratic set up would be questioned.

Therefore, I request you to be more cautious when you are giving more powers under the Cr. P.C. I would like to know if it would not be misused. In these circumstances of misuse, what is the protection? Now, courts are already burdened with so many cases. Already, the pending cases are crossing more than 2 crores-mark at an all India level. In the High Coruts also, more than 1.5 lakh cases are pending in each High Court. In such circumstances, we cannot depend on the judiciary for an immediate remedy; that also would take a long time.

Therefore, giving more powers to the prosecution is not at all advisable. Also, even in the compounding cases, we are giving powers to the prosecution, to send the report to the magistrate. Then, the accused cannot retract from that. He has to follow the same thing which is already written to the concerned magistrate. In the same way, regarding the bail provision, there are some new amendments to sections 436, 437 and also for anticipatory bail, in section 438 the procedures are laid down.

It is a welcoming process because indiscriminately certain courts are

giving anticipatory bail. That itself bypasses the legal process. There a clear direction is being given with regard to the nature and gravity of the case of accusation, antecedents of the applicant, including the fact as to whether he has previously undergone imprisonment and has been convicted by a court in respect of any cognizable offence. All these are a welcome step because already judicial verdicts are there on this aspect. Regarding the first part of this amendment which is related to the punishment for knowingly carrying the arms in any procession, I would submit that it is a welcome step because it becomes a valour to show arms in their hands when they are going in a procession. We can see very easily in the media that many persons, who are participating in processions, carry arms to threaten crowds and also to threaten the civil population. That is also a very welcome step. In the same way, clause 174 is also there for amendment. This clause is regarding non-appearance in response to proclamation under section 82 of Act 2 of 1974. This also is a welcome step. Many of the cases are pending for years together simply because one accused is absconding. A proclamation is issued. Even then the accused is not appearing at all before the court. Therefore, the cases are pending and accumulation of cases can be very easily settled by this method for further punishment. Regarding another amendment, that is, the Criminal Law Amendment Bill, 2003, it is giving a very new appearance in every aspect. But I would just like to submit one point that the Constitutional guarantee which is already given in article 20 (3). I will read out that portion for your appreciation. It says that no person accused of any offence shall be compelled to be a witness against himself. This Constitutional guarantee is now bypassed by allowing the prosecution to get a statement from the accused even at the investigation stage itself. I feel, Sir, it too much upon the powers being given to the prosecution. Sir, as the basic law says, the criminal law says, many real accused may be acquitted but no innocent should be convicted. Innocent persons can be very easily brought in by this procedure where the new procedure is followed of getting a statement from the accused that he is ready to admit the crime. That is the plea of bargaining. It is a system which is followed in America. There the court is the arbitrator. But here the prosecutor is given the power. The prosecutor moves certain application; affidavits are filed by the accused and then the plea bargain starts to work. By this the police can very easily procure the accused to admit the offence. Sir, we can very easily find that modern technology or modern

scientific methods are not at all properly given to the police administration at the grassroots' level. It may be at the highest level where a white collar crime is committed that they would have followed these procedures. But at the grassroots' level where the ordinary citizens are affected by this colonial method of ill-treating them, causing cruelty to them, beating them up, making them to have bleeding injuries and then having some recovery, afterwards, they are shown absconding; and then they are shown as arrested; and they are produced before the magistrate, in such a case, these types of giving statement at the first instance itself and then sending it immediately to the magistrate, that means a person, an accused can be asked to sign a blank paper which the police officers will fill up as they like and then send it to the magistrate. By all this an accused is totally deprived of his own defence in the future case.

Therefore, I feel it goes beyond the constitutional mandate already given for a citizen of India. We have to take it as a criminal case and say that he is innocent till he is proved guilty. I would just like to go on with another section. Section 195 (a) is included where the cognisable case before the magistrate can be straightaway taken up for the purpose of compounding and also the hostile witnesses will be treated and also if the witness becomes hostile, he or she will be appointed for that purpose. Already there is a provision in Section 503 of the Indian Penal Code where it should be a *mensrea* of parties, where a particular witness wants to turn hostile with the intentions that they want to cause injustice to the prosecution. In such a situation, only they are prosecuted but now even an innocent person—who may be first of all shown as a witness but turned hostile because he may not know about what he has given earlier or in his name what was written earlier—when he goes into the witness box he will be treated as a hostile witness but he has to confess to the imprisonment of three years. That is true and there is no security also to make these innocent people to escape from the clutches of law by this provision. Regarding financial statement, Sir, I would like to suggest that nowadays a lot of cases are pending before the trial courts and also the district level courts and also the High Court. But we are passing so many laws in the Parliament and also in the State Legislatures. But the pressure is on the judicial system. The Judiciary cannot come and plead for their expenditure before the Parliament. The Executive can very easily come before the Parliament; get the consent for having more Budget for them.

But the Judiciary is confined. They have got their own exclusion. At the State level, the State is not giving them enough Budget to care of. The judicial officers are not having proper responsibility. They are not even having any proper courts. Even in Delhi, I have seen in a metropolitan court, a man is working like a machine, sitting from 10 o'clock to 5 o'clock going on pushing the paper one after another without understanding what is inside it. This type of thing is going on. Why is too much pressure given? We can just cite the instance of the United Kingdom and the United States of America where when a law is enacted; along with that law the judicial impact is also included. How much financial commitment will be there? If this partricular law has come into force, how many cases are they expecting, how much burden will be upon the judiciary from the bottom to the highest level? That expenditure has to be compensated by that particular administrative department. Now, we normally allow the financial statement to come along with this Bill only when it is produced before the Parliament. After that it is not part of the Act at all. It is taken away when it becomes an Act. Therefore, there is no commitment on the part of the administrative departments when they are making a law. They should have the statistics of how many cases they expect by this, how many violations are already reported or how much violation is going to come, how much financial commitment is going to come to the court and also the prosecution agency. If these statistics are given, then, we can very easily remove the pendency of cases and more judges can be appointed or more evidences can be given. With these words, I support this Bill, but, at the same time, I feel that it needs some more consideration when the real making is going on and also when the guidelines are given to the State Governments. Thank you.

SHRI A. VIJAYARAGHAVAN (Karala): Thank you, Mr. Deputy Chairman, Sir. I rise to support the Bill.

Sir, in our country there is an inordinate delay with regard to hearing of cases. There is a tardy investigating system. There is a combersome procedure to try cases. There are lengthy judgements. The paucity of criminal courts and the vacancies of judges are all creating problems to the judicial system. The system prevailing in our country is much old. We had started this during the period of the British Raj. So, naturally, there is an urgent need to overhaul the procedures and the cases have to be settled as early as possible. Hence, these amendments are very much

necessary for a proper criminal system in our country. While supporting the provisions of this Bill, I have some doubts as well.

With regard to compounding of offences, I would say that the Standing Committee also recommended in this connection. I have a doubt. This is the period of globalisation. Even in our judicial system, we are applying the norms of globalisation. While we are diluting the compounding of offences under Section 320, there are some suggestions suggested for investigation in the Bill.

Now, I come to the pendency of cases in courts. There is a provision in the Bill dealing with plea-bargaining—out of court settlement. The provisions of the Cr. P.C. are mainly emphasising for out of court settlement, even in criminal cases. In a country like India, we have to think about the prevailing social system. If we allow out of court settlement, it would damage the poorer sections of the society. Naturally, this provision would be misused. So, utmost care should be taken while making such an amendment to the Criminal Procedure Code.

There was also an emphasis for the expansion of human rights. It is very essential. I would like to congratulate the hon. Minister for taking up this initiative. Sir, according to the National Crime Records Bureau, the number of under-trials in prisons, at the end of 2003, was 2,17,659. A majority of them are booked for petty offences. So, this is the situation. The National Human Rights Commission indicates overcrowding of 32.33 per cent in our jails. Sir, lakhs of people have been put behind the bars. Almost all the jails are overcrowded. The situation is very bad. I had an opportunity to go there. I was in jail. At that time, there were 1,500 inmates, out of its capacity of 500. It was very difficult. So, we should pay our attention to this area also. There is a proposal from the hon. Home Minister, according to which those who have completed seven years of imprisonment should be given some amnesty. Here, I would like to take up the issue of Mr. Abdul Nasar Madani. This is an issue which is very much relevant to mention when we are making amendment to the Criminal Procedure Code. Sir, this is one of the biggest human rights violations which have taken place in our State. It is a matter of concern to the people of Kerala. If Mr. Madani has committed some offence, we don't have any objection to punish him. But, for the last seven years, he has been in jail. He is not getting sufficient medical care. It is a big human

rights violation. No bail has been granted to him so far. He is not even a prime accused in the case. The feeling in our State is like that. Whatever charges have been made against him, we do not support him. Now, there is a feeling. This case is a very good example of human rights violation in our country. While discussing this Bill, I request the hon. Home Minister to take necessary steps and ensure protection of human rights for Mr. Abdul Nasar Madani. Sir, human rights should not be denied to him. Then, Sir, I come to rape and rape-related cases. It is very good that as per new amendments there is a prohibition on the arrest of women after the sunset and before the sunrise, except in unavoidable circumstances. Here, I would support the amendment in the Bill. While discussing this matter, I would like to say that stringent measures should be adopted to deal with such crimes. The Cr PC should be amended accordingly. Even today we read in the newspapers about the Shanti Mukund rape case. It is pending in the Delhi High Court. In such cases whenever an accused offers to marry the victim, the court immediately adjourns the case. There is a male chauvinism among our judges. It is very much reflected in this case. It should be checked. There should not be any loophole in the cases related to rape or any kind of attack on women. Here, in this Amendment Bill, we are providing new provisions to start a Directorate of Prosecution, and also giving more powers to make appeals. I have a suggestion regarding the rape cases and the cases related to attack on women. If a trial court convicts the accused and the higher court acquits, there should be a provision for automatic appeal. The appeal should be mandatory in such cases. If the trial court convicts the accused naturally they approach the higher court. And, if the higher court acquits the convict, it should be mandatory that the State Government should go for an appeal because such cases are increasing day by day in our country. I give you an example of one such case in my State. In the case of Suryanalli, the accused were punished by the trial court, but they were acquitted by the High Court. But the State Government has not gone for appeal so far. It has to be ensured that an appeal is made in such cases. While we are discussing about human rights, and cases related to rape and attack on women, I would like to say that the Government should take stern action in such cases and the CrPC should be amended accordingly. The rights and prestige of women in this country should be safeguarded. Fortunately, there are some provisions in this Amendment Bill, but still I would like to request the Government to make necessary amendments to ensure that

the rights of women are safeguarded, and such type in instances are checked.

Then, you are giving more authority to the police with regard to confession, statements taken before a Magistrate, etc. I think, it will overburden the Judiciary. The existing provisions in the IPC and the CrPC are sufficient to protect the human rights.

So, these are some of my suggestions with regard to this Bill. I think some more Bills, related to the CrPC, are pending. We have to make necessary changes to expedite the proceedings of the various cases that are pending before the different courts in this country.

SHRI FALI S. NARIMAN (Nominated): Thank you Mr. Deputy Chairman for permitting me to intervene in this very important Bill. I must congratulate the Home Minister for helping to keep the law, especially, the criminal law, more and more civilised. As has been rightly said, we wind up our clocks so that they keep time. So, also, from time to time, we must wind up our laws to see that they move with the times. Unfortunately, the Bill introduced way back in 1994 by late Mr. S.B. Chavan, and vetted by a Committee report of 1996 is, at last, coming up for passing, with some amendments, in the year 2005. Now, Sir, ten years delay in courts is to be deplored and it is very deplorable. But, I think ten years delay in passing a Bill by this House is unpardonable. It is, absolutely, unpardonable because there is on excuse for it. At least, judges have an excuse that 'oh, we have a very large backlog and so on.' But we have no backlog. What is the backlog here? Therefore, I would, respectfully, suggest to the hon. Minister not only in his Department, but in every single Department of Government to see that this does not happen. Otherwise, we make a mockery of making the law. In fact, we always criticising the Judiciary, and, rightly, for not speeding up things. Now we have to blame ourselves if we don't speed up things. Therefore, we must look inwards a little. If the hon. Parliamentary Affairs Minister was here, he could, perhaps, make some notes and tell everybody with regard to each and every Ministry, We must see which are the pending Bills. There is a whole line of Bills, pending since 5-10 years, and, then, we push them into a mill as if it were for being passed in the next session; whatever they are, whether they are of a particular Department, which is headed by the hon. Home Minister, or any other Department.

Having said this, there is one aspect on which I would like to draw his attention. About a week or two weeks ago, I recall that in the Question Hour we had some debate on the Mallimath Committee report in which the hon. Home Minister had intervened. The Mallimath Committee report is a much more recent report. It is controversial in parts. There are difficulties which the Home Minister had pointed out on the last occasion. But I recall that the Chairman, sitting where you are sitting now, had, expressly, said that we can have a debate for half-an-hour or one hour on the Mallimath Committee Report. I would, earnestly, urge upon the hon. Home Minister to have some sort of a debate on the Mallimath Committee report so that we can get rid of the provisions, which are not acceptable to the House. But there are very useful provisions in the Mallimath Committee Report, which I think, we should get passed also as soon as possible. There is no difficulty in introducing another Criminal Procedure Code (Amendment) Bill. The whole idea is to try and improve civilized law of crimes, which is in crying need for repairs.

There are two or three small points, Sir. I welcome the amendment to section 202 for people whole make frivolous complaints, especially, against persons who do not reside within the jurisdiction of the Magistrate. The Home Minister has very rightly said that the Magistrate must stop and must not issue process unless he himself is satisfied. That is a very, very good provision. But whilst this is correct, there is section 46, which says, "No women to be arrested after sunset and before sunrise." I would, respectfully, suggest that no person should be arrested except in 'exceptional circumstances' after sunset and before sunrise. What is the haste? The other day, we read that in another country, which is a neighbour of ours, a very prominent gentleman, who happened to be the ex-Prime Minister, was arrested at the dead of night. His wife pleaded, "Please don't take him away at 2.30 in the morning." But he was taken away at 2.30 a.m. I still recall a judge, a very well known judge, Justice Tendulkar, had said in connection with requisition orders in Bombay that it is dark deeds that are associated with the night and please don't do anything at night. There is no need, unless there is a compelling reason. If you have a compelling reason, the section provides for it under 'exceptional circumstances'. 'Exceptional circumstances' belies any definition. There is no need to define it.

Therefore, why only women, no person should be arrested at night, because we do have some respect for dignity. What is the use of talking about article 21, human dignity, and life and all that if we are not going to incorporate the same in our laws. Therefore, I don't think that you must only restrict it to women. Of course, I accept that women should not be arrested in the night, but I don't see why a male person should also be arrested at the dead of night unless there are some absolutely urgent circumstances, for example, fleeing or some such information. So, I would respectfully request the hon. Home Minister to move himself an amendment and substitute the word 'person' for 'women' and there will be no difficulty in section 46.

I am very happy to see that Mr. Patil has personally looked into various amendments, because I find in 50 (a), for instance, introduced by him, that the moment a persons is arrested,--it is a very useful provision--you must inform the person's relatives to find out where he is. This is the civilising influence of the criminal law which I greatly admire and respect and I congratulate the Minister for that. I also welcome the guidelines that are now framed for granting anticipatory bail. We get more and more cases of anticipatory bail becuase there are more and more false criminal complaints, so allegedly false criminal complaints filed or to be filed against various persons.

One last thing, Sir, and that is on section 125. I ask the Home Minister, is it enough to raise Rs. 500/- for maintenance of a person who neglects his wife and child to only Rs. 1500/-. Remember, section 125 starts with the words, "whoever having sufficient means, neglects his wife and child." Now, if he has sufficient means, please give the magistrate a discretion, because I have known of cases where very affluent people, in various walks of life, belonging to your community, my community and other communities as well, are very stingy when it comes to maintaining neglected wives and children.Therefore, we must give powers to the magistrage. Empower him to say, "not exceeding Rs. 5,000/-." I don't think that it is such a large amount for a neglected wife to get, if the means of a husband justify it. That is all I have proposed and I am very happy to welcome this Bill. Thank you.

श्री राशिद अल्वी (आंध्र प्रदेश): सर, मैं सरकार को और ऑनरेबिल होम मिनिस्टर को मुबारकबाद देता हूं कि सीआरपीसी को अमेंड करने का उन्होंने कदम उठाया। बहुत देर से उठाया

क्योंकि यह 1994 से लेकर अभी तक पैंडिंग पड़ा रहा, देर आयद दुरुस्त आयद। बुनियादी तौर पर इस मौके पर मैं कहना चाहूंगा कि हमारा देश 100 करोड़ की आबादी से ज्यादा बड़ा देश है और इस देश के अंदर इंस्टीटयूशंस और बहुत सारे सिस्टम कॉलेप्स करते जा रहे हैं। मैं बहुत अदब के साथ कहना चाहता हूं कि मैं वैलकम जरूर करता हूं जो सीआरपीसी के अंदर अमेंडमेंट किए गए लेकिन इसके साथ-साथ जरूरत इस बात की है कि पूरे कानूनी सिस्टम को नीचे से लेकर ऊपर तक, जब तक तब्दील नहीं किया जाएगा, तब तक ठीक नहीं किया जा सकता। तमाम कवानीन चाहे वह सीआरपीसी और आईपीसी है या दूसरे कवानीन हैं, देश का जुडिशियल सिस्टम सिर्फ इसलिए है कि देश के लोगों को इंसाफ मिलना चाहिए, देश की कानून व्यवस्था-लॉ एंड आर्डर ठीक रहना चाहिए। पिछले 60 साल के बाद आज हम सीआरपीसी के अंदर जो अमेंडमेंट कर रहे हैं, पहले भी हम सीआरपीसी और आईपीसी के अंदर अमेडमेंट करते रहे हैं। लेकिन हमने कभी पूरे जुडिशियल सिस्टम के बारे में गौर नहीं किया। पूरे जुडिशियल सिस्टम को हमें बदलना पड़ेगा अगर हम पूरे देश की व्यवस्था ठीक करना चाहते हैं। लॉ कमीशन ने जो रिकमंडेशंस हमें दी थीं, उसके मुताबिक आज की सरकार यह अमेंडमेंट ला रही है। यह बहुत बेहतर है। लेकिन बहुत सारे कवानीन इस देश के अंदर, मिसाल के तौर पर पंजाब जेल मेन्युअल के अंदर आज भी लिखा है, जब मैं अर्ज कर रहा हूं इस हाउस के अंदर और यह बात मुझे याद है, मैंने लोक सभा में when Advani Sahib was the Home Minister, even then I said in the Lok Sabha. पंजाब जेल मेन्युअल में आज भी कानून बना हुआ है कि:

what shall be the uniform of European jailor, and what shall be the uniform of Indian jailor. आज भी लिखकर, liquor is allowed for foreigners inside the prison, but not for Indians. मै यह नहीं कह रहा हूं कि इंडियन्स को इजाजत दे दी जाये, लेकिन, it is shameful for all of us. 60 साल की आजादी के बाद भी, आज भी, this is the law of the land. यूरोपियन जेलर की यूनिफार्म क्या होगी और इंडियन जेलर की यूनिफार्म क्या होगी, इससे पता चलता है कि हमने तवज्जो नहीं दी है कि पूरे देश को किस तरीके का कानून चाहिए, कौन-सा कानून है जो इस देश के लिए मुनासिब हो सकता है। अंग्रेज चले गये, लेकिन जो कानून वह हमें देकर चले गये, इसी कानून के ऊपर हम सारी वकालत करते हैं और सारी जुडिशियरी उसी पर डिपेंड करती है। हमने कभी तवज्जो नहीं दी, हमें सारे जुडिशियरी सिस्टम को बदलना पड़ेगा और जब तक यह जुडिशियल सिस्टम नहीं बदला जायेगा तब तक स्थिति ठीक नहीं होगी। इसके बावजूद मैं कहना चाहता हूं कि इस मौजूदा सिस्टम के बारे में पार्लियामेंट की रिपोर्ट है कि पिछले दस साल से, उससे ज्यादा समय से एक लाख 13 हजार 444 केसेज सबआर्डिनेट कोर्ट्स के अंदर पेंडिंग हैं। मैं वेलकम करता हूं जो अमेंडमेंट आप कर रहे हैं कि आधी से ज्यादा अगर किसी आदमी ने जेल काट ली है, तो उसको जमानत दे देंनी चाहिए। लेकिन मैं सरकार से

कहना चाहता हूं कि दस साल से ज्यादा एक लाख 13 हजार केसेज कोर्ट्स के अंदर पेंडिंग हैं, जिनका फैसला नहीं हुआ है। इन एक लाख 13 हजार के अंदर बहुत से लोग हैं जो बरी हो जायेंगे, उनके खानदानों का क्या होगा? टाडा के अंदर दो परसेंट लोगों को सजा दी गई, 98 परसेंट लोग बेगुनाह साबित हुए, वे दस-पन्द्रह साल तक जेलों के अंदर पड़े रहे। उनके खानदान तबाह हो गये, उनकी आने वाली नस्लें तबाह हो गयीं, इसके लिए कौन जिम्मेदार है? आपने इसमें अमेंडमेंट किया है, उसका भी मैं वेलकम करता हूं कि एक हजार रुपया जुर्माना किया है, जिस आदमी को बेगुनाह, बगैर किसी वजह के गिरफ्तार अगर पुलिस करेगी। मैं बहुत अदब से कहना चाहता हूं कि क्या एक आदमी को अगर पुलिस गिरफ्तार करती है, बगैर किसी वजह के करती है, बगैर किसी ग्राउंड के करती है और उसके बाद उसे छोड़ दिया जाता है और आप एक हजार रुपये का जुर्माना उस पुलिस आफीसर पर करते हैं, क्या यह काफी है? क्या इस सिस्टम का ऑनर आप करेंगे? जो आदमी एक रात जेल में गुजार कर आ रहा है, उसकी तमाम सोसाइटी के अंदर, उसकी जो बेइज्जती हुई है, उसके लिए कौन जिम्मेदार होगा? क्या उसका कम्पनसेशन सिर्फ चंद रुपये हो जायेंगे। इसके बारे में मैं अर्ज करूंगा कि इसको और अमेंड कीजिए और सख्त से सख्त सजा का प्रावधान करना चाहिए।

दूसरे मुल्कों में और हमारे मुल्क में एक फर्क है। दूसरे मुल्कों के अंदर यह सोचा भी नहीं जा सकता है कि पुलिस बेईमानी कर सकती है। यूनाइटेड किंगडम के अंदर, यूरोप के अंदर, अमेरिका के अंदर और गल्फ कंट्रीज के अंदर, यह तो सोचा जा सकता है कि बड़े ऑफिस, बड़े लोग, मंत्री लोग, प्राइम मिनिस्टर डील्स के अंदर कोई बदनुमानी कर सकते हैं, लेकिन शायद कोई भी आदमी यह तसब्बुर नहीं कर सकता कि पुलिस आफीसर बेईमानी कर सकता है, लेकिन हमारे देश के अंदर यह बदकिस्मती है कि आम जनता का विश्वास पुलिस के ऊपर नहीं है। पुलिस के ऊपर पॉलिटिकल कम्पलसंस है, बहुत सारी स्टेट्स के अंदर है, मैं उत्तर प्रदेश की स्थिति इस मौके पर बयान नहीं करना चाहता हूं। जो हालात है, वे इस तरीके के हैं कि सीआरपीसी के सिर्फ इन अमेंडमेंट्स से काम नहीं चलने वाला है। सर, सब-ओर्डिनेट कोर्ट्स के अंदर 2 करोड़ 27 लाख, 57 हजार, 693, पूरे हिन्दुस्तान के अंदर सवा दो करोड़ केसेज पेंडिंग हैं। सवा दो करोड़ केसेज को निपटाने में कितना समय लगेगा? सीआरपीसी के इन अमेंडमेंट्स से कोई बहुत फर्क नहीं पड़ेगा। स्टेंडिंग कमेटी की जो रिकमेंडेशन्स हैं, उन रिकमेंडेशन्स पर भी सरकार को गौर करना पड़ेगा। स्टेंडिंग कमेटी ने जो 1734 फास्ट ट्रैक कोर्ट्स रिकमेंड की थी। अभी तक 246 फास्ट ट्रैक कोर्ट्स बनी भी नहीं हैं। फास्ट ट्रैक कोर्ट्स ने 12 लाख केसिज़ में से करीब-करीब 6 लाख केसिज़ को तय किया। इस बारे में मैं इतना जरूर कहना चाहता हूं कि जो तेजी के साथ केसिज़ का फैसला होता है, वह बहुत अच्छी बात है लेकिन इसके अंदर भी कितना लोगों को इंसाफ मिलता है। ज्यूडीशियरी के अंदर यह जरूरी नहीं है- इंसाफ के लिए, जस्टिस के लिए - कि जो केसिज़ पैंडिंग हैं, अगर दो करोड़

केसिज़ पैंडिंग हैं तो एक दम उन सबको खत्म कर दिया जाए। यह कत्ल हो जाएगा, ईमानदारी का और इंसाफ का। इसके लिए हमें कोई रास्ता निकालना पड़ेगा। नारीमन साहब यहां बैठे हैं। सुप्रीम कोर्ट के अंदर 98 परसेंट केसिज़ फर्स्ट हीयरिंग के अंदर डिसमिस हो जाते हैं। 27-28 जजिज़ हैं, पूरे देश का बोझ उनके कंधों पर है लेकिन इसे इंसाफ तो नहीं कहा जा सकता कि फर्स्ट हीयरिंग के अंदर 98 परसेंट केसिज़ डिसमिस कर दिए गए, दो परसेंट केसिज़ को एडमिट किया गया और दो परसेंट केसिज़ के अंदर भी नोटिस ईश्यू किया गया और जब नोटिस के बाद दूसरी पार्टी आयी तो उनमें से भी पचास परसेंट डिसमिस कर दिये गये। किस तरीके से आप कह सकते हैं कि आम आदमी को इंसाफ मिल रहा है? ज्यूडीशियल सिस्टम इस देश के अंदर या दुनिया के किसी भी देश के अंदर इसलिए बनाया जाता है कि आम आदमी को इंसाफ मिले, देश के हर आदमी को इंसाफ मिले। मैं यही कहना चाहता हूं, इस पूरे सिस्टम के अंदर, कि जब तक हम पूरे सिस्टम को नहीं बदलेंगे, तब तक हम इस पर कामयाबी हासिल नहीं कर सकते। सर, मैं जरूर कहना चाहता हूं कि दुनिया के बहुत सारे मुल्कों के अंदर, खास तौर से क्रिमिनल केसिज़ के लिए ढेली भी नहीं है। सिर्फ उन्होंने पुलिस के अंदर एक कमरा बना दिया है जहां पर क्रिमिनल्स को बंद करते हैं। जज बैठता है, मुद्दई को भी बुला लेता है, मुद्दालय को भी बुला लेता है तथा गवाहों को भी बुला लेता है और एक हफ्ते के अंदर केसिज़ को तय करके उनको पनिशमेंट दे देता है। अगर कोई अपील में जाना चाहता है तो अपील में जा सकता है। लेकिन हमारे यहां कोई मुद्दत तय नहीं है कि कितनी मुद्दत लगेगी। मुझे याद है, मैं चीफ़ जस्टिस ऑफ इंडिया की कोर्ट में बैठा था As I remember it, it was in 1993- दस साल पहले । 18 एकड़ डिसप्यूटिड लैंड का एक केस आया, चीफ जस्टिस के सामने। All of you would be surprised to know that that case was filed in the Subordinate court in 1863. 1863 में वह केस फाइल हुआ था जो सुप्रीम कोर्ट के सामने 1993 में आया और after hearing that case, the Supreme Court referred the case back to the High Court on a particular legal point. एक और जैनरेशन चाहिए, एक सदी और चाहिए इस केस को तय करने के लिए। यह कौन सा ज्यूडीशियल सिस्टम है? इसलिए मैं कहना चाहता हूं कि एक नया ब्लू प्रिंट बनाना चाहिए। मैं होम मिनिस्टर साहब से कहूंगा क्योंकि होम मिनिस्टर साहब भी पूरे तरीके से मुतमईन नहीं हैं इस सिस्टम से। can quote खुद शिवराज पाटील जी का एक आर्टीकल है, जिसमें उन्होंने ज्यूडीशियरी पर कोई शुबहा जाहिर नहीं किया है लेकिन उन्होंने कहा है कि "Judiciary can compel the Executive to perform its duties, but it should not issue executive orders as such. There is a difference between issuing executive orders and ensuring that the Executive performs its duties" कि सीआरपीसी से इसका कोई मतलब नहीं है लेकिन होम मिनिस्टर साहब को भी यह अहसास है कि कहीं न कहीं ज्यूडीशियल सिस्टम के अंदर गड़बड़ चल रही है। कोई अकाउंटेबिलिटी नहीं है, ज्यूडीशियरी की। अभी लोकपाल बिल स्टैंडिंग कमेटी के सामने

पैंडिंग है। चीफ जस्टिस ऑफ इंडिया ने कहा कि लोकपाल बिल के अंदर जजिज़ नहीं आने चाहिए। मैं नहीं समझ पाता कि जजिज़ लोकपाल बिल के अंदर क्यों नहीं आने चाहिए? क्या हिन्दुस्तान की सारी ज्यूडीशियरी ईमानदारी के साथ काम कर रही है? मैं किसी पर्टीकुलर जज के बारे में नहीं कहना चाहता हूं लेकिन मैं सुप्रीम कोर्ट के जजिज़ से लेकर सबोर्डिनेट कोर्ट्स तक कितने जजिज़ को कोट कर सकता हूं, लेकिन उनका एहतराम करता हूं इसलिए हाउस के अंदर मैं बोलना नहीं चाहता। इलाहाबाद हाई कोर्ट के अंदर एक हाई कोर्ट जज का बेटा अपने कुलीग, दूसरे हाई कोर्ट के जज से रिलीफ ले लेता है और उसका बेटा इससे रिलीफ ले लेता है।

यह एक हाई कोर्ट में नहीं है। कोलकाता हाई कोर्ट की reputation रही है कि जो फैसला चाहिए, हाई कोर्ट के जज से लिया जा सकता है। बिजनौर में एक थानेदार ने ...(व्यवधान)... आंध्र प्रदेश में भी यही सिचुएशन है। आंध्र की गवर्नमेंट जो अच्छे काम करना चाहती है, हाई कोर्ट रोक देता है। बिजनौर में एक थानेदार ने, you will be surprised to know कि कत्ल के मुकदमे में ज़मानत दे दी, सिर्फ इसलिए कि उसका ताल्लुक होई कोर्ट के एक जज से था। एस.पी.ने सस्पेंड कर दिया, तो उन्होंने हाई कोर्ट से स्टे ले लिया and he was in-charge of the Police Station. इसलिए जजों की भी accountability होनी चाहिए और सी.आर.पी.सी. में जो अमेंडमेंट्स आपने किए हैं, उनका मैं वैलकम करता हूं, लेकिन बहुत अदब से दरखास्त करता हूं कि एक नए blue-print के बारे में सरकार तवज्जह दे, पूरे क्रिमिनल सिस्टम को, ज्यूडीशियल सिस्टम के बारे में सोचे। इसमें सैक्शन 125 में जो अमेंडमेंट किया है- पांच सौ रुपए से बढ़ाकर जो डेढ़ हज़ार रुपए किए हैं- उसे मैं कहूंगा कि इसको बदला जाना चाहिए। सिर्फ डेढ़ हज़ार रुपए काफी नहीं होते। जैसे कि नारीमन साहब ने कहा कि जिनके पास पैसा है, वे भी अपने बीवी-बच्चों का ठीक तरह से ख्याल नहीं करते, इसलिए इसको बढ़ाना चाहिए और इसको according to the status of husband करना चाहिए। इसे equal to the status of husband करना चाहिए और मेरे ख्याल से इसमें पहले अमेंडमेंट हो चुका है। 24 सितम्बर, 2001 को यह रिपील किया जा चुका है, पहले इसमें पांच सौ रुपए का प्रोविज़न नहीं था। मैं नहीं समझता कि इसे किस तरीके से कहा गया कि पांच सौ से बढ़ाकर पंद्रह सौ कर दिया जाए! इसमें एक बार हो चुका है, अब इसमें अमेंडमेंट करके equal to the status of husband करना चाहिए।

सर, एक-दो बातें सिर्फ और कहूंगा। इसमें सेक्शनवाइज़ जो अमेंडमेंट किए हैं, यह मैं पहले ही अर्ज़ कर चुका हूं कि सैक्शन 358 में पुलिस को पनिशेबल बनाया जाए, अगर वह किसी innocent आदमी को गिरफ्तार करती है। Anticipatory bail को आपने थोड़ा मुश्किल बनाया है।... (व्यवधान)...

श्री उपसभापति: कनक्लूड कीजिए।

3.00 P.M.

श्री राशिद अल्वी: Anticipatory bail को आपने थोड़ा मुश्किल कर दिया है, यह ठीक भी है, लेकिन पूरे हिंदुस्तान में हर जगह Anticipatory bail का प्रोविज़न नहीं है मैं यह भी कहूंगा कि Anticipatory bail का प्रोविज़न कुछ स्टेट्स में भी होना चाहिए और यहां पर एक कदम आगे बढ़कर, मैं यह भी कहना चाहूंगा कि सी.आर.पी.सी. के अमेंडमेंट के साथ-साथ, क्योंकि जो भी कानून बनता है, चाहे वह सी.आर.पी.सी. के अमेंडमेंट्स हों या दूसरा हो, वह स्टेट और सेंटर के रिलेशनशिप को मद्दे-नज़र रखकर बनता है। जब कंस्टीट्यूशन बना था, तो शायद हमारे कंस्टीट्यूशन बनाने वाले लोगों ने नहीं सोचा था कि एक वक्त आ जाएगा कि सेंटर में coalition गवर्नमेंट होगी और स्टेट्स में न जाने कितनी पार्टियों की सरकारें बनेंगी और वे कितना कहना मानेंगी, कितना कहना नहीं मानेंगी? मैं होम मिनिस्टर साहब से कहूंगा कि उत्तर प्रदेश में आपने मिनिस्टर ऑफ स्टेट फॉर होम को नक्सलाइट्स की प्रॉब्लम के लिए भेजा था। उन्होंने तमाम ऑफिसर्स की मीटिंग बुलाई थी, लेकिन चीफ मिनिस्टर ने मना कर दिया और कोई ऑफिसर नहीं आया था, किसी ने अटेंड नहीं किया।

श्री उपसभापति: अल्वी साहब, खत्म कीजिए।

श्री राशिद अल्वी: मैं अपनी बात खत्म कर रहा हूं। स्टेट और सेंटर के रिलेशनशिप पर भी गौर करने की ज़रूरत है और anticipatory bail का जो प्रोविज़न है, it should be implemented all over the country. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Shri Vasant Chavan. You have seven minutes.

SHRI VASANT CHAVAN (Maharashtra): Mr. Deputy Chairman, Sir, thank you for giving me this opportunity to speak on this Bill. Sir, at the very outset, I welcome the Code of Criminal Procedure (Amendment) Bill, 1994. It was pending for long and it is good that it has come to this House. On page 3, item no. 10, clause 4, "In exceptional cases, the law provides for arrest of women." Well, I am not against the arrest of women at night time because, particularly I come from Mumbai, and I know among the prominent smugglers, there are also some women smugglers today; among the prominent dons, there are some women dons also. Sir, they are operating big gangs...*(Interruptions)*... It is a fact...*(Interruptions)*...

डॉ प्रभा ठाकुर: सर, वूमेन डॉन कहां हैं?...(व्यवधान)....

SHRI VASANT CHAVAN: Sir, it is a fact...*(Interruptions)*...All women are not alike but there are criminal women also...*(Interruptions)*... It is a fact and it is in Mumbai...*(Interruptions)*...

श्रीमती बिम्बा रायकर (कर्नाटक): सर, ऐसा फिल्मों में होता है, रियल्टी में नहीं होता है ...(व्यवधान)...

SHRI VASANT CHAVAN: Well, Sir, I will convince my sisters with some facts. I will give them papers. I don't say all women are like that but about dons I am speaking. Sir, it is not like that. In law sometimes it is also essential for the general good of the public to arrest women. But this particular provision has allowed the policemen, with immediate superior authority, or, immediate superior officer, to arrest the women. This is risky. A Constable has got immediate superior authority, his Head Constable; a Head Constable has got immediate superior authority, his Assistant Sub-Inspector; and, then an Assistant Sub-Inspector has got his immediate superior authority, his Sub-Inspector.

If this serious decision in Exceptional cases is to be taken, it should not be taken at such a junior level or such a small level. What I would request our learned Home Minister that this level should not be less than the rank of Assistant Superintendent of Police whose prior permission must be required for arresting the women at midnight. Sir, this level should be elevated. While making rules, the hon. Minister may make such rule and should make such rule that it should not be at the level of lower officers who are moving together. The Constable, the Head Constable, the Assistant Sub-Inspector, and, the Sub-Inspector, they all are moving together; they just chat with each other and that becomes a permission. That should not be the provision. It should always be with some superior, senior person like an Assistant Superintendent of Police; he is a person of 40-45 years of age and he understands the gravity of the case. So, it should be elevated.

Sir, you have done good for the women. Can you not think about senior citizens? God knows that time is going to come in future. At least, senior citizens of 70 years and above should also be considered in this clause, and, there should be a provision that for arrest of senior citizens who are more than 70 years of age, some permission should be required. Senior citizens should not be rounded up on the road just like anything because they have passed certain age, their health is a problem, and their activities are also a problem. So, this is what I want to suggest.

Sir, on the same page, item 25, it is mentioned that every police officer

is to inform the relatives of the arrested person, accused person that such and such person is arrested. Information is to be given to his relatives, to his family members or to any responsible person. Sir, it is a good thing. Nowadays, many times, it happens that a person is arrested and nobody knows where he has gone. The relatives don't come to know, the friends don't come to know; they lodge another complaint of missing of that person. They can't arrange for any legal remedies for that. This is a good thing but there is no time limit in this clause. It should be informed to the responsible person, relatives or friends whosoever he names for, but police has got no time limit within which they should inform. Sir, in law it is prescribed that if a person is arrested, he should be produced before a court within 24 hours. So, there should also be a limit of at least 24 hours. If a person is arrested, within 24 hours, his family members, his relatives or his nominees should be informed so that they can do some legal remedy. Or, if his health is not proper, or, he is undergoing some treatment, they can inform the police that such and such person has been arrested, and he has got such ailments, so, take care or any thing like that. Sir, I again want to speak on one point, that is, on page 12, item no. 41, Section 436. A new section is being inserted. It is a very good thing, a very good sense, in the procedure of giving justice. This is totally a new concept, a new idea that if a person is detained, because it happens many times, that a person is arrested and the final punishment to the person is one month simple imprisonment. But, for inquiry matter, he is detained for two months. After two months, the court gives him one month's simple imprisonment. Actually in law and justice, detention itself is a simple imprisonment. When a person is detained, he is not allowed to go anywhere; his activities are restricted. It is simple imprisonment. So, where the final punishment is simple imprisonment, he is already under detention. He has now come with a good clause that if a person is under detention, he should not be under detention for more than one half of the time of the final punishment. *(time-bell)* Suppose a person is to be punished under the law for the month, then, he should not be under detention for more than 15 days. It is a good idea. It is a good clause. But, where would you compensate it? That is not written in the law. When you undergo punishment in jail, your days are reduced after some time. Every year also, it is reduced on good conduct and you get the benefit. But, if he is in detention for 15 days and the final punishment is for one month, he is allotted one month, then, these 15 days should be reduced from the 30

days of punishment. So, some such equation should be there. If he is going to be given a rigorous imprisonment, then, you may reduce one-fourth. But, if it is simple imprisonment, you may reduce the same quantum which he has already suffered for matter of inquiries in the police custody or magistrate custody. Sir, these are some of my suggestions. I welcome the Bill. I think, the hon. Home Minister would consider them. Thank you.

SHRI N.K. PREMACHANDRAN(Kerala): Thank you very much, Mr. Deputy chairman, Sir. I also welcome the proposed amendment to be incorporated in the Code of Criminal Procedure, 1973, and, hence, I support the Amendment Bill. Sir, as has already been cited here, this Bill has been pending since 1994. This Bill is drafted on the recommendations of the Law Commission, National Police Commission, headed by Mr. Dharamveer, and also the observations made by various courts and suggestions from various State Governments. After having a long thought, this Bill had been brought in the year 1994. As just now mentioned here, we could have a discussion after a decade, that is, in 2005. Before entering into the Bill, I would like to make a submission to the hon. Home Minister. When the National Police Commission's Report is being partly incorporated in this Bill, I would like to suggest that most of the recommendations made in the National Police Commission's Report are not being implemented either by the State or by the Centre. So, I would like to take this opportunity to request the hon. Minister to look into the National Police Commission's recommendations and to see that those recommendations are implemented in proper form. That is my first request to the hon. Home Minister. Sir, now I come to the amendments. One is regarding arrest. It is well explained here. Detailed discussions took place regarding arrest. It is there in Clause 7 and Clause 8 of the proposed Amendment Bill. It is said that all persons, except women, can be arrested after sunset and before sunrise. Now, an exception is being given to women. We are discussing all these matters in this House, so the discussion should have an impact. So many official amendments come from the hon. Minister, from the Government. I would request the hon. Minister to make an amendment so that this provision may be made applicable to senior citizens also. Then we will think of the next phase of widening that base. Let an official amendment also come today with the consent of this House so that this discussion will have an immediate impact on this Bill.

Sir, now I come to the issue of examination which is contained in

Clause 10 and Clause 19 of the Bill, that is, amendments to Section 53 and Section 164 of the Cr. P.C. Section 53 is to be amended as Section 53A, and Section 164 is to be amended as 164A. Both these amendments are in respect of examination of the accused in the case of a rape and examination of the person of the woman who is subjected to rape. Now, a new amendment has come regarding medical practitioners. The present practice is to have a qualified doctor in a Government hospital. It is now being liberalised. Now, any Registered Medical Practitioner is sufficient to examine the person of the accused as well as the person of the woman who is subjected to rape. Sir, my apprehension is that this provision will be misused. Because a registered medical practitioner can be a Homoeopathic registered Medical Practitioner, and Ayurvedic Medical practitioner can also be a Registered Medical Practitioner. here, I am subject to correction. I want to know whether in a rape case, medical examination either by a Homoeopathic Registered Medical Practitioner would be sufficient. I want to seek clarification from the hon. Minister in respect of a registered medical practitioner. There is every chance of this provision being misused by police officials. they handle these cases in an improper way.

The third point is regarding the amendment is respect of custodial rapes and custodial deaths. I fully welcome the amendment brought forward by the Government. Now, this has become a usual thing. Some days back in my hometown, one young boy was taken to custody on the allegation of theft of a mobile phone, and he was killed in the custody. Agitation is still going on in my hometown. It was the case of Koilol East Police Station. Now, if this amendment is there, definitely, a judicial inquiry will be there. A mandatory provision is there to have a judicial inquiry if there is a custodial death or a custodial rape. It is a welcome amendment to be incorporated in the Cr. P.C. so that the human rights will be protected, especially in the custody. Strikes, agitations and every such thing can be aavoided by way of this amendment. I strongly welcome this amendment.

Sir, my next point is regarding Section 436. This Section is to be amended as Section 436A by virtue of Clause 41 of this Amendment Bill.

Sir, once again, I refer to the case of Mr. Abdul Nasar Madani. As per this amendment, if he is detained, without having bail for half of the maximum period of imprisonment specified for that offence under that

law, he should be released on bail even on his personal bond or with or without sureties. This is a very good suggestion. As far as Mr. Abdul Nasar Madani is concerned, he is in jail for the last seven years as an under-trail, and the trial has started now. I do agree. And what will happen? I would like to put this question to the whole nation about our judicial system. Suppose after evidence, examination and everything, Mr. Abdul Nasser Madani is found to be innocent, then who is responsible for his custody in the jail for the last seven or eight years? This is a pertinent question. Even Mr. Abdul Nasser Madani has not been allowed to attend the last rites of his grandmother. So, that is the judicial system which is there. My suggestion is that some drastic amendments are also required to meet this situation. Not only Mr. Madani's case, but so many other cases are also there. These under-trial prisoners, after evidence, examination and everything, the court finds that he is not guilty and he is being released. That situation we have to meet. This is happening in our judicial system. Also, the other case which has been mentioned here, the Shanti Mukund Hospital rape case yesterday. I am not going into the details of the verdict and all these things. After all these things, the Delhi Sessions Court has found that the accused is guilty. After the pronouncement of the quantum of the punishment, the accused is ready to marry this girl. The nurse is aged 22 years whose eyes are brutally hurt by this rape and all these things are being done after two years. When the quantum of punishment is to be determined, the petitioner came to the court and the magistrate is asking the family members to come and attend the court to respond to the petition. After doing all these things, what is the meaning of it? So, there should be some clear-cut observations.....(*Interruptions*).... I am surprised to hear the verdict or the observation of the court. I am not quoting it. But it is quite unfortunate to see such incidents after the rape. This is creating a new precedence in our country that after committing the rape, if he is ready and willing to marry the girl, the quantum of punishment will be reduced. That observation has also come from the court. That is reported in the Press. Its observation is that if you are ready to marry the girl, definitely the quantum of punishment will be reduced. So, this has to be checked. This is my suggestion. And also, Sir, regarding the Director of Prosecution, most of the States have implemented and the States are now empowered by this legislation that they can have Director and Deputy Director of Prosecution. Also, there is some conflict between the Director of Prosecution and the

Advocate-General. So many conflicts are there. Sir, as far as the criminal matters are concerned, the opinion of the Director of Prosecution shall be given due respect and weight.

Also. I want to make one more suggestion regarding the custodial deaths and custodial rapes. The Standing Committee on Home Affairs has recommended a very good suggestion, that is, if a custodial death or a custodial rape has taken place, definitely it is the bounden duty of the Government to pay compensation to the dependants of the deceased or the dependants o the victim and also a Government job has to be given. That is a recommendation whcih the Standing Committee Home Affairs has made in respect of this Bill. And also, I would like to suggest that that amendment may also be made an official amendment in this Bill, so as to make it work in a full-fledged manner. With these words, once again, I take this opportunity to congratulate the Minister as well as the Government in bringing forward such new and reformative amendments to the Criminal Procedure Code. With these words, I conclude. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Thank you. Shrimati Ambika Soni.

SHRIMATI AMBIKA SONI (Punjab): Thank you, Sir, for allowing me to briefly intervene on this Criminal Procedure (Amendment) Bill, 1994. Sir, since 1994, there has been 11 years' delay. I believe the Standing Committee cleared the amendments as early as by 1996. But for one reason or the other, successive Governments have either taken it up or deferred discussions. The fact remains that 11 years' delay has really meant in this case is justice being denied to so many. But I congratulate the Home Minister for the amendments he has brought before the House today. A lot more has to be done, but, nevertheless, a good beginning has been made, a beginning in showing that law can be made more gender sensitive.

We might just wonder that forbidding the police authorities not to arrest women after sunset and before sunrise, except in very exceptional cases, is a very small sensitivity being shown to them. I wish, along with this, Sir, you had also decided to bring in a part of this amendment that women should be tried in camera always, and only women should be asked to be around women when women are arrested. But, nevertheless, I would also like you to kindly consider that when you talk of exceptional cases where women also could also be arrested after sunset and before sunrise, it

should not only be sufficient to take the permission of one person senior to the man making the arrest. The earlier speaker has said that it is very often that two ranks are travelling together. So, one senior rank, probably, would not be enough for exercising authority in a transparent manner. I wish you would name an authority, higher than the immediate senior, to take permission from if a woman has to be arrested after sunset. I congratulate you that by way of these amendments, you have made an attempt to bring about greater transparency, the amendment of setting up a Directorate of Prosecution, whereby, you would have a collegium of people in authority to cooperate, and interact with police. This would, to my mind, eliminate,—I am not a legal person, I am an activist—to a very great extent, charges often make that at a lower level, prosecution is not always transparent. Sir, you have also brought about amendments where you would bring about greater accountability. You have talked of custodial deaths, rape while in custody, those who abscond while they are in custody, you have laid down an authority that of a magistrate to go into or make inquiry into these cases. Certainly, I feel that this is a step which would increase accountability, and would be more fair. Sir, I must also congratulate you for one thing. In response to a question I asked during the Question Hour earlier in this Budget Session of Parliament, when I had asked you as Home Minister, would you consider releasing all those people and my question was in direct reference to the young Punjabi youths, who have served more than 14 years in custody, which probably, in most cases, is more than the term they were going to have or be indicted for, in some cases, more than a life term, and while answering my question, you had promised that you would favourably consider this appeal. I would like to congratulate you that in your amendments, you have spoken about people who can't afford to pay bail, to be released after they have served half their term of punishment on a self bond. But more than that, you have also spoken of those who have gone through their entire term or what could be their entire term, to be released. Sir, when you brought this amendment, I would now like you to please expedite this whole process, and let those young people, who are rotting in jails, be provided justice. The political atmosphere in this country has changed even though you continue to hold Punjab as a disturbed area. We all know that it is not now today a disturbed area.

It is a most peaceful area. I would like you, Sir, to expedite the process

of releasing all those young people, whether they are in the Jodhpur jail or in any other jail across this country, and let them get on with their lives in, what is, today, a peaceful Punjab.

Sir, I would also like to mention here that you have brought an amendment where you have banned or you have authorised authority giving permission to hold public processions or demonstrations, and you have banned the use of weapons. Sir, I would request you to qualify that because there are religious communities in this country, which use what would, probably, ordinarily qualify a weapon, but what is necessarily a part of their religious practices; I mean the Kripan, I mean the talwar, which is often used by the Sikh community as an essential symbol, or as one of the five symbols necessary for their religious practices. Sir, it can be incorporated, or exceptions could be made where they are being used, from times immemorial, as part of their religious sentiments, or certain sizes can be permitted, as was once indicated to a member of the Sikh community, who wanted to enter Parliament with an oversized weapon, the so-called weapon. There was a clarification as to the size to be used. I would like you to look over this clause, a little bit more sensitively, so that it does not hurt the religious sentiments.

Sir, I am not going to take much more time, but I would like to make a few more suggestions which you can incorporate, if not in this very Bill, but in the one which you would bring, hopefully, before the Session finishes! And that is, Sir, relating to some stringent punishments. I would request you to amend the Cr. PC to try, under article 302, that is murder, all those involved in the trade, manufacture and selling of spurious drugs. They kill people. It is murder. I would also like you to try all those people, bring whatever amendments, Sir, as you find, are necessary, who commit rape, also under article 302. They kill the spirit of a woman they rape. I would also like you to try, under article 302, all those people who physically abuse children. They kill a bud before it is allowed to blossom. Sir, in the changed circumstances of this country, these crimes are so prevalent that they affect both the rich and the poor at the same time. This would not only be a very welcome step for the people across our country but would go to prove that the law is the same for all those who kill people, whether they take the life away in physical terms or whether they kill the spirit of the person they abuse in one way or the other.

Sir, I would like to congratulate you for bringing these amendments. It is high time, Sir, that in the last six or seven years we just waited patiently for these amendments to come in. But in the course of one year, Sir, you have brought forward this Bill. I wholeheartedly support it.

KUMARI NIRMALA DESHPANDE (Nominated): Sir, I would like to congratulate, through you, the hon. Home Minister for bringing these amendments, and, as my esteemed colleague, the eminent lawyer, has said that the law should also change along with the changing times, much more needs to be done. But still whatever has been done, though belated, is to be really appreciated.

I would just like to place some of the major facts that need to be given attention to. It is the implementing agency that has much to do. Though we may have very good laws, who is going to implement them? May I just refer to what we experienced two years ago during the Gujarat carnage? Both the police and the Army were there. But when I met the poor women, who were victims, in the camps, they said, "ये फौजी देवता हैं जिन्होने हमें बचाया है, लेकिन ये पुलिस वाले जो हैं ये तो राक्षस हैं।" The policemen were like devils and the armymen were like angels. Both of them are Indians. Both of them I would say, come from the same community or class. Then, why is there this difference in training? I would like to say that in those days, fortunately, the Indian Army behaved in such a way that we could raise our heads high because of their performance. But, at the same time, the police behaved in such a way that we had to hang our heads in shame. A woman in the camp told me that when she was crying for help "बचाओ, बचाओ", the policemen who were standing at a few feet away said, "आज आपको बचाने का ऑर्डर नहीं है।" they said, "We have no instructions to save you today". What does it mean? They were not doing their duty. Why? It is because of-there may be other reasons-the difference in training and orientation. What is needed today is to change the mindset of the whole police force in accordance with the changing times.

I may take you back to some of the riots in one of the States. You might have found in the newspapers that Hindu-Muslim riots had taken place. They were not Hindus and Muslims. They were Muslims and police.

It was the police who were killing the Muslims. Why? Because they did not have the mindset that they were there to save the Muslims. So, in the whole country, the mindset of the police force needs to be changed and such kind of an orientation should be given to them that they are protectors of communal harmony, they are protectors of human rights. This difference is possible with proper training and orientation.

I would just like to tell you a small incident. I was touring in a remote area of Kashmir and there was a unit of BSF. Some officers requested me to go there and address them. I asked them, "When you leave this place, what would you like to be termed as? ''खुशबू छोड़कर जाना चाहते हैं या बदबू कैसे आपको याद किया जाए'' I told them many things. They were in tears and they said, "None has told us like this before. We are not that people. But we are never told like that". then I realised that it is the training and the orientation that makes a difference. So, I would like to request, through you, Sir, to the hon. Home Minister that this should be taken into consideration. All over India, special efforts should be made to change the mindset of the police. They should treat other human beings as human beings and, especially, with regard to minorities, they should be able to realise that they are there to protect and not to kill. So, some kind of a course has to be devised to give proper training and orientation to the police force. They are human beings. We should train them to do what the Indian Army did in Gujarat. Really, the women, sometimes, wanted to touch their feet. They said, "No, no. You are like our sisters. We are your brothers. We only did our duty". Why did they behave like angels? Why did, I would say, their own community people in the police force behaved in a different way? So, kindly give a thought to proper training and orientation. Thank you.

SHRI P.G. NARAYANAN: Mr. Deputy Chairman, Sir, I welcome this amendment Bill, though it has come very late. There is one important amendment in this Bill that a woman accused should not be arrested in the night. Sir, it is a very welcome provision. Even if an accused happens to be a male, normally the arrest is made in the day time, in normal and ordinary circumstances. But in extra-ordinary situations or under special circumstances, the arrest can be made in the night in order to maintain peace. Actually, it depends upon the accused. Suppose, the accused

happens to be a popular political personality or a high profile religious person, he should be arrested in the night time to avoid any untoward incident of violence and to maintain peace.

[THE VICE-CHAIRMAN (SHRIMATI SARLA MAHESHWARI) in the Chair]

Madam, the hon. Member, Shri Natchiappan has referred to the arrest of Shri Karunanidhi. When he was arrested even in the night, he had created unnecessary and unwarranted scenes. He shouted at the top of his voice that the police was killing him. *(Interruptions)*. That scene was allowed to be video-tapped and it was even shown on the Sun TV. Had he been arrested in the day time, he would have instigated violence and created a lot of other problems. So to avoid such scenes and to maintain peace, the arrest was effected in the night time.

There is another amendment that if a person is arrested, his arrest should be intimated to his relative or to a person nominated by him. This is a very welcome amendment. All other amendments are relevant and absolutely necessary. I welcome all these amendments. With these words, I support the Bill. Thank you.

डा॰ प्रभा ठाकुर: उपसभाध्यक्ष महोदया, उजाला देर से ही सही, जब भी आए, उसका स्वागत है। दंड प्रक्रिया में संशोधन संबंधी इस महत्वपूर्ण विधेयक के लिए मैं माननीय गृह मंत्री जी को बधपाई भी देती हूं और इस विधेयक का स्वागत भी करती हूं। अनेक ऐसे मुजरिम, जो अपराध प्रमाणित होने से पहले ही मुजरिम के रूप में सजा काट रहे हैं, उन्हें राहत देने के लिए, महिलाओं को संरक्षण देने के लिए यह विधेयक एक वरदान सिद्ध होगा। लम्बे समय से इस विधेयक की प्रतीक्षा थी, इस विधेयक की आवश्यकता थी। कानून में कहा जाता है कि चाहे 100 अपराधी छूट जाएं, लेकिन एक बेगुनाह को सजा नहीं होनी चाहिए। मैं समझती हूं कि इस विधेयक के जो संशोधन हैं, उनसे न्यायिक प्रक्रिया के सरलीकरण में और मदद मिलेगी। कई मुजरिम, जो अपराध प्रमाणित हुए बिना ही कोर्ट की लम्बी-लम्बी प्रक्रियाओं के तहत भारत की अनेक जेलों में कई वर्षों से सड़ रहे हैं, जेल भोग रहे हैं, उनके लिए इस अमेंडमेंट में यह प्रावधान किया जाना कि यदि उस अपराध की सजा होती है और उतना समय उन्होंने जेल में काट लिया है तो उनकी रिहाई होनी चाहिए और यदि वे अपराधी प्रमाणित होते हैं तो वह अरसा उनकी उस अवधि में, जो उन्होंने पुलिस कस्टडी में निकाला है, जोड़ा जाना चाहिए। यह एक जरूरी मानवीय कदम है।

महोदया, धारा 176 का संशोधन करते हुए, इसमें जो एक बहुत ही महत्वपूर्ण संशोधन किया

गया है, वह है कि पुलिस कस्टडी में जो मौतें हो जाती हैं या जब बलात्कार के मामले बनते हैं, तब बड़ा ही अफसोस होता है, बहुत ही दु:ख होता है जब ऐसे मामले समाचार-पत्रों में आते हैं, और जब हम ऐसे मामलों के विषय में पढ़ते हैं। जब रक्षक ही भक्षक बन जाएंगे, तो जनता मदद के लिए कहां जाएगी मैं समझती हूं कि यदि एक आम आदमी किसी हत्या का या बलात्कार का अपराधी है, उससे भी अधिक संगीन अपराध है कि यदि पुलिस कस्टडी में ही इस प्रकार का कोई अपराध होता है। कई बार ऐसे मामलों मे हम अकसर देखते हैं कि पुलिस के जो लोग हैं, वे उन संबंधित पुलिस कर्मियों को बचाने में लग जाते हैं, क्योंकि उन्हें लगता है कि यदि उन पर आरोप आता है तो इससे पूरा पुलिस विभाग कलंकित होगा। यह सोच गलत है, इस सोच को बदले जाने की आवश्यकता है, फिर वह चाहे ट्रेनिंग के माध्यम से हो या फिर जैसे भी हो। मैं समझती हूं कि पुलिस विभाग में यह सोच आने की आवश्यकता है कि यदि किसी ऐसे कलंकित व्यक्ति को सजा मिलेगी तो इससे पुलिस विभाग का नाम उजला होगा, उज्ज्वल होगा और उसमें जनता का विश्वास और अधिक बढ़ेगा, सोच इस प्रकार की होनी चाहिए, जबकि सोच इसके बिल्कुल विपरीत है।

महोदया, मैं इसमें एक उदाहरण देना चाहती हूं, आठ वर्ष पूर्व जब मैं अजमेर से लोक सभा का प्रतिनिधित्व कर रही थी, अजमेर में एक युवा दलित छात्र नेता धर्मेन्द्र के साथ इसी तरह की घटना घटी। उसे कुछ नहीं था, वह लड़का केवल अपने दोस्तों के साथ बैठा था और वे लोग बीयर वगैरह पी रहे थे। पुलिस के लोग आए और वे अधिकारी नशे में धुत्त थे, उनसे कुछ कहा-सुनी हुई और उसे उठाकर एरेस्ट कर लिया गया और उसी रात उस युवा छात्र नेता की पुलिस के द्वारा बेरहमी से पिटाई के कारण मौत हो गई। इस वजह से बहुत जन आक्रोश उमड़ा, दलित समज में भी आक्रोश उमड़ा और जनता में भी आक्रोश उमड़ा। हमने मांग की जो यहां से दल आए और उस मामले की जांच हुई। जांच तक तो वे अधिकारी सस्पेंड किए गए, लेकिन अफसोस की बात यह है कि दो वर्ष के बाद सुनने में आया कि वे अधिकारी छूट गए और बहाल कर दिए गए। अगर ऐसे मामलों में संबंधित अधिकारियों को, जो उस समय दोषी हैं, सजा नहीं होती, तो फिर वे उस मामले को आत्महत्या का मामला बनाने में लग जाते हैं या और कुछ सफाई देने लगते हैं, उससे पूरा पुलिस विभाग कलंकित होता है। अत: मैं माननीय गृह मंत्री जी से यह कहना चाहूंगी कि इसके लिए सही तरह व्यवस्था होनी चाहिए, सही प्रकार की एप्रोच होना इसके लिए बहुत आवश्यक है।

कई बार धारा 173 के संशोधन के तहत हम देखते हैं कि जेल में जो पुलिस वाले होते हैं या पुलिस अधिकारी होते हैं, वे अपराधी को इतना मारते हैं, इसमें मैं एक और संशोधन भी करना चाहूंगी, मैं चाहती हूं कि इसमें वे कुछ और भी जोड़ लें। जैसा कि लिखा गया है कि जो पुलिस वाले बलात्कार या हत्या के अपराधी पाए जाएंगे, उन मामलों की पहले पुलिस के द्वारा ही जांच की जाती थी किन्तु अब न्यायालय द्वारा ऐसे मामलों की जांच की जाएगी, हम इस कदम का स्वागत करते

हैं, इससे इस तरह के मामलों में कमी आएगी। इसमें माननीय गृह मंत्री जी एक चीज और जोड़ लें कि पुलिस वाले जिस तरह मनचाहे तरीके से किसी भी अपराधी पर थर्ड डिग्री की धारा का प्रयोग करने लगते हैं, उसके लिए यह भी आवश्यक है कि पहले वे न्यायालय द्वारा उसकी आज्ञा प्राप्त करें कि इस मामलें में थर्ड डिग्री दी जानी चाहिए या नहीं। न्यायालय की आज्ञा के बिना वे उसका प्रयोग हरगिज नहीं कर सकें, इस पर भी वे जोर दें, वरना कई बार पुलिस वाले जान से नहीं मारते तो मार-मार कर अधमरा जरूर कर देते हैं और अकसर पुलिस की लाठी उन्हीं लोगों पर टूटती है जो गरीब हैं, कमजोर हैं, बेसहारा हैं, आम तबके के मामूली लोग हैं या फिर जो मजदूर हैं, ठेले वाले हैं, रिक्शे वाले हैं या छोटे -मोटे व्यवसायी हैं अथवा मजदूरी करके पेट पालने वाले हैं। पुलिस का आक्रोश ज्यादातर ऐसे लोगों पर ही टूटता है, पुलिस की लाठी ऐसे लोगों पर ही टूटती है, इस बात पर भी ध्यान दिया जाना चाहिए।

माननीय गृह मंत्री जी बहुत संवेदनशील हैं, मैं माननीय गृह मंत्री जी से कहना चाहूंगी कि आज गृह मंत्री या अन्य किसी भी नेता के पास जाने में जनता नहीं हिचकती है, लेकिन क्या कारण है कि आज भी पुलिस को देख करके लोग डरते हैं, उसे अपना मित्र नहीं समझते हैं। जनता में पुलिस के प्रति विश्वास नहीं है, जनता उससे डरती है और दूर भागती है। यह स्थिति क्यों है, इसकी समीक्षा होनी चाहिए। पुलिस तो जनता के संरक्षण के लिए है, कानून व्यवस्था बनाए रखने के लिए पुलिस की बहुत आवश्यकता है। लेकिन वह पुलिस की ऐसी स्थिति क्यों नहीं होनी चाहिए कि उस पुलिस को जनता अपना मित्र समझे, अपना संरक्षक समझे और उस पर विश्वास करे कि यह हमारी सहायक बनेगी। यह स्थिति क्यों नहीं है? इस दुर्भाग्यपूर्ण स्थिति पर विचार करने की आवश्यकता है। ठीक है अनुशासित होना, कठोर होना पुलिस के लिए जरूरी है, लेकिन साथ ही उन्हें अपना मानवीय पक्ष, उनको व्यवहार की भी ट्रेनिंग दिए जाने की आवश्यकता है। जो यह एक अमेंडमेंट किया गया है धारा-46 का संशोधन करते हुए कि असाधारण परिस्थितियों में ही महिलाओं को थाने में सूर्यास्त के बाद या सूर्योदय से पूर्व गिरफ्तार किया जा सकेगा अन्यथा नहीं। यह एक स्वागत योग्य संशोधन है। लेकिन माननीय गृह मंत्री जी, इसमें यह क्यों रखा गया है -- असाधारण परिस्थिति में। यहां कई माननीय बड़े-बड़े वकील बैठे हुए हैं, वे जानते हैं इस बात को कि अगर कानून में सुई के बराबर छेद भी रह जाता है तो उससे एक हाथी गुजर सकता है। मैं माननीय गृह मंत्री जी से कहना चाहूंगी, हालांकि एक माननीय सदस्य ने कहा था कि महिला डॉन भी हुआ करती हैं उनके बारे में क्या सोचा? पता नहीं कितनी महिला डॉन हो रही हैं भारत में और कहां-कहां हैं। फूलन देवी जी भी हुई थीं जोकि पुरुषों का शिकार हो करके, उनके आतंक और अत्याचार के कारण, डॉन के रूप में हुई, इसलिए जनता ने उनको जिताकर लोक सभा में भेज दिया। यह फैसला तो आखिर जनता की अदालत में

हुआ कि डॉन कौन है और कौन नहीं। तो कितनी महिलाएं होंगी डॉन। ऐसी बात का सहारा लेकर के 99 फीसदी या 99 फीसदी से अधिक वे महिलाएं, जो कहीं इस उसमें नहीं आतीं, लेकिन एक लैकूना ऐसा रह जाने से कहीं ऐसा न हो कि और कई महिलाओं को उस चीज को भुगतना पड़े, बल्कि होना यह चाहिए कि माननीय गृह मंत्री जी, पुरुषों के मामले में भी यह होना चाहिए कि सूर्यास्त के बाद या सूर्योदय से पूर्व यदि गिरफ्तार किया जाता है तो किसी विशेष परिस्थिति में ही गिरफ्तार किया जाए। यदि किसी महिला के लिए असाधारण परिस्थिति लागू होती है तो पहले न्यायालय से आदेश लेने के बाद ही उसे विशेष परिस्थिति में माना जाए अन्यथा नहीं, यह मैं कहना चाहूंगी। अंत में, मैं यह कहना चाहूंगी, मान्यवर ...(व्यवधान)... पुलिस वालों की कार्यशैली में यह भी शामिल है कि रातों को ट्रक रोकना और ट्रक रोक कर जिस तरह उनसे पुलिस वाले वसूली करते हैं, डकैती करते हैं, तो वह कहावत हो जाती है कि जब बाढ ही खेत को खाने लगेगी तो रखवाली कौन करेगा। तो इस बात को सोचने की जरूरत है, इन पक्षों पर ध्यान देने की आवश्यकता है।

थर्ड डिग्री के इस्तेमाल से कई बार होता यह है कि अपराधी सोचता है कि मार-मार कर मेरी हत्या हो रही है तो इससे अच्छा है कि हत्या का अपराध ही कबूल कर लो। तो यह स्थितियां बनती हैं। यहां पर कोई न्यायालय के किसी संरक्षण के बिना थर्ड डिग्री का इस्तेमाल नहीं होना चाहिए। अंत में, मैं इतना कहना चाहूंगी कि ऐसी स्थितियां बनी हैं माननीय गृह मंत्री जी, चाहे कोई दुर्घटना होने पर या किसी भी कारण ये महिलाएं पुलिस थाने में जाने के नाम से ही डरती हैं। आज आप देखिए सड़कों पर कितने एक्सीडेंट होते हैं, लेकिन कोई व्यक्ति रिपोर्ट लिखाने नहीं जाता तथा दुर्घटनाग्रस्त व्यक्ति की कोई मदद नहीं करता। क्यों नहीं करता? इस डर के मारे नहीं करता कि पुलिस के चक्कर कौन काटेगा, पुलिस की परेशानी से बचने के लिए ही वह ऐसा सोचता है कि कहीं ऐसा ही न हो कि मुझे ही न फंसा दिया जाए। वह जो मदद करने वाले सोचते हैं कि मुझे पुलिस फंसा देगी तो इस डर के मारे दुर्घटनास्थल पर वे मदद नहीं करना चाहते हैं। ऐसी परिस्थिति में बदलाव के लिए माननीय गृह मंत्री जी इसमें और कुछ संशोधन करने की आवश्यकता है। महिलाओं के साथ कोई भी कांड हो जाए, केस हो जाए लेकिन वे थाने में रिपोर्ट करने नहीं जातीं, शाम के बाद क्या शाम से पहले भी नहीं जाना पसंद करतीं, क्योंकि उन्हें आम आदमी से ज्यादा खतरा थाने में जाने से लगता है, क्या कारण है? इस व्यवस्था को अवश्य देखा जाए कि पुलिस थाने में यदि कोई भी पुलिसकर्मी नशे में पाया जाता है, शराब का सेवन करता है, उसकी पूरी मॉनिटरिंग की जाए तथा उसके खिलाफ गंभीर कार्रवाई की जानी चाहिए। यह आम तौर पर होता है, या तो कई बार वेस्टेड इंटरेस्ट में या किसी दबाव के तहत या शराब के नशे में या वर्दी के नशे में पुलिस के लोग, पुलिसकर्मी पुलिस कस्टडी में लोगों पर इतना जुल्म ढाते हैं, जोकि बहुत अमानवीय कहा जा सकता है।

मैं माननीय मंत्री जी से इतना ही कहूंगी कि आपने इसमें बड़े अच्छे संशोधन किये हैं, जिनके लिए मैं आपको अनेक बधाईयां देते हुए कहूंगी कि इसको और मजबूत बनाने के लिए, इसमें कुछ और संशोधन जोड़ते हुए, आप इसे इतना पुख्ता बनाइये ताकि पुलिस विभाग हमारे लिए गौरव की बात हो। पुलिस थाने में जाने से न आम आदमी कतराये और न ही महिलाएं कतरायें। यह बात नहीं रहे कि लोग कहें कि चोरी की रिपोर्ट दर्ज कराने पुलिस थाने में मत जाना, वरना और गांठ में जो पूंजी है, वह भी जेब से चली जायेगी। ऐसी स्थिति न बने। इस देश की जनता पुलिस को अपना मित्र समझकर चले। इन्हीं शब्दों के साथ, आपको बधाई और धन्यवाद देते हुए मैं अपना भाषण समाप्त करती हूं।

SHRI ASHWANI KUMAR (Punjab): Madam Chairperson, thank you for giving me this opportunity. May I at the threshold state that this is indeed an important amendment Bill, the amendment of the Criminal Procedure Code. Madam, I do believe that the Criminal Procedure Code is the fulcrum of the administration of the criminal justice system in this country. And to that extent, it is related directly to the functioning of the police power of the State, which is the ultimate symbol of its sovereign power. We have for long witnessed a very purposeful debate in the country as to the need to civilise the police power. And to the extent that some of the amendments brought before this House seek to do exactly that, I would like in all humility like to commend hon. the Home Minister. I, Madam, have a proclaimed bias in favour of restraint on police power, and, therefor, whatever I am going to submit needs to be viewed as a proclaimed philosophical and personal bias, consistent with the human rights jucispeudence in this country and consistent with the experience of the misuse of power, both of the magistracy and the police Madam, at the threshold, I would like to commend the hon. Home Minister with respect to the proposals he has brought forward in Clauses 24 and 29. These are indeed very significant proposals because we have often witnessed wrongful complaints being filed against persons at far-off places which are *ex-facie* untenable and motivated. The proposed amendment in Clause 24 seeks to build into the land necessary safeguards and to that extent, these are indeed most welcome.

Madam, clause 29 is, indeed, another very significant and progressive amendment which ensures that in order to reform a convict, the mandatory 14-year period for proposing his release on probation would include the time spent as an undertrial in custody. Indeed, very significant, and in line

with the judgements of the Supreme Court. And, of course, there are a number of other provisions which seek to provide in-built safeguards consistent with the human rights jurisprudence sanctified by a catena of very significant decisions of the Supreme Court. But, I must confess my support and my appreciation for the amendments must come to an end there. I have very serious reservations about many provisions in the amendment, Bill and I would implore the hon. Home Minister to kindly take note of deeply felt sensitivities on the manner in which the Bill has been drafted.

Madam, at the outset, I would like to draw the hon. Home Minister's kind attention to Clause 7. Madam, Clause 7 seeks to incorporate an amendment to section 46. And this is how the Notes on the Clause reads: It says, "This clause seeks to amend section 46 to empower the police officer concerned to use all means necessary to effect arrest including causing death in the case of proclaimed offender under sub-section 4 of section 82." I dare to ask, under what principle of Constitutional jurisprudence or criminal law is it justified for police to cause death merely because the person happens be a proclaimed offender? An hon. Minister of this House, who for good or bad reasons, was once declared a proclaimed offender. I cannot condone and endorse the suggestion that would enable the police to cause death in discharging a duty to apprehend. On the face of it, it does not read well, it does not sound well and it brings us no credit. I would recommend and strongly suggest that such a provision should be deleted forthwith.

Sir, I next come to clause 14. Again, it is a kind of replica of drafting from the relics of the British RAJ . Clause 14, *inter-alia*, says if the police seizes property which is of perishable nature and of which the value is less than Rs. 500, you shall auction it. Is it practical to conduct auction of a perishable property which has a value of Rs. 500? Did anybody apply his mind to this? Certainly, not condonable, Sir. There has to be an application of mind, there has to be credibility in legislation which seeks to civilise the criminal justice system of this country. I would request the Home Minister to kindly take note of this and ensure that the seriousness in drafting of a legislation, as pristine as this, is not lost sight of.

Sir, I have a comment on clause 17 which relates to the alimony payable under section 125 of the CrPC. It states that on the recommendations of

4.00 P.M.

the Chief Justices, the alimony amount should be increased from Rs. 500 to Rs. 1,500. I do not think it is a very generous proposal. Rs. 1,500 a month is less than the minimum wage in this country. It must be extended significantly. You have to give a subsistence allowance to a divorced wife or a separated wife; it must be meaningful. You cannot just take the support of the Chief Justices' conference to accept the recommendation as it is. There must certainly be a meaningful subsistence allowance for the divorced separated wife.

Sir, I have a comment on...

SHRIMATI BIMBA RAIKAR: Sir, it should be at least one-fourth of the husband's income because you cannot get the idea of the income of lawyers and doctors as to how much they earn. If he is a Government servant, you exactly know what is his earning.

MR. DEPUTY CHAIRMAN: Please do not intervene.

SHRI ASHWANI KUMAR: May I proceed and make my comment on clause 21, Sir? Clause 21 is a very important clause. It seeks an amendment in section 176. I would like to draw the kind attention of the hon. Home Minister to section 176. Clause 21 says, See 126 is sought to be amended to provide that in case of death or disappearance of a person or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry." It is a very wholesome provision. But may I submit to the hon. Minister, how does one know whether a particular offence has, in fact, been committed in the custody of the police? All of us, who have practised politics on the ground know that offences are committed on people while in actual custody of police, but they are not shown on record that they are in the custody of police. So, if you want to make this safeguard meaningful, Sir, you will have to incorporate in the provision the guidelines or specific criteria to say how would you determine or how would you ensure that those who are in actual custody are so recorded in the papers of the police.

Sir, there is then a provision about anticipatory bail—this is section 438. I think this is an extremely important provision. It talks about the conditions in which anticipatory bail will be granted. The hon. Home Minister

may please look, with me, at the way it is drafted. and I am reading from the Notes on Clauses. It says in note (iii) that the presence of the person seeking anticipatory bail in the court should be mandatory. In my respectful submission, it makes nonsense of the provision. All of us know that any one who seeks anticipatory bail, if he is seen moving around, even to go to the Court, is arrested and apprehended. So, his plea becomes infructuous. I am sorry, Sir, it is a bad piece of legislation. It is a legislation that affects all of us. Please look at these provisions carefully. Sir, with request to clause 41— you say that you are inserting a new clause 436 (A) to provide that where an under-trial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided, he shall be released on a personal bond. Why one-half Sir? I ask a simple question. If a man is accused of an offence punishable by 7 years, do we seriously want to tell the people of this country that he can be detained for three-and-a-half years? Not even for three hours should a man be detained ordinarily. Of all one's rights, the most valuable human right is the right to freedom, right to dignity, right not to be incarcerated. We are willy-nilly providing in the law that you can be incarcerated for years without being convicted. I tell the Hon. Minister the reason appears to me to be that it is physically impossible to bring an end to trial resulting in a conviction or an acquittal, considering the number of cases, and the number of judges. Sir, any reason could be justified but not this. The primary responsibility of the State, which exists for the individual and not *vice-versa* is to ensure that individual dignity is not compromised through a power sanctified by law. Please see, Sir. This is a matter of great sensitivity. I do not see any logic in the incarceration of a person for half of the punishment which might be inflicted upon him on conviction. Today there are any number of offences for which you could be convicted for years. Does it mean that a person could languish in jail for months and years without trial or Conviction? I am sorry to say, Sir, *(Time-bell)* that I, consistent with my own commitment to human rights, which I think is my primary commitment, I cannot endorse it. Please do take my observations on record.

My last point is that you have said that section 324 will be made a

non-bailable offence. Every single day, there are hundreds and thousands of instances of simple hurt by sharp weapons. But it is still a simple hurt. Now, if you are going to be making this also as non-bailable, it would only add to the burden of the courts; bail would continue to be denied; and, this would be contrary to justice Krishna Ayer's judgement given as early as 1977 that bail is the rule and jail is an exception. This amendment does not do justice to the salutary principle hallowed by every international convention. Please, Sir, I implore upon you not to push this Amendment Bill as it is. I know it has taken 11 years. Let it take another couple of weeks or two or three months. Please give it your very personal attention. It does not do justice to the spirit that emanates this amendment. With these words, I thank you, Sir.

STATEMENT BY MINISTER

MR. DEPUTY CHAIRMAN: Hon. Members, the Statement by the Defence Minister is listed after the business is over. The hon. Minister wants to make the statement. I would like to take the sense of the House.

SOME HON. MEMBERS: Yes.

MR. DEPUTY CHAIRMAN: Mr. Minister please read the statement.

An article appeared in Outlook Magazine about visit of Justice S.N. Phukan Commission to Pune and other places

THE MINISTER OF DEFENCE (SHRI PRANAB MUKHERJEE): Sir, with your permission I would beg to state that the issue of the Outlook magazine dated 9th May 2005 has commented adversely on the visit of Justice S.N. Phukan Commission to Pune and other places. In tis connection I would like to place the facts before the Hon'ble Members.

2. Hon'ble Members may kindly recall that the Commission was looking into 14 items relating to the Ministry of Defence which included:

I.	T-90S Tanks
II.	Tank Navigation System Upgunning of 130mm Field Guns Krasnopol